UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

BELL MEDICAL CENTER Employer and UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC Petitioner	Case 18-UC-404 (formerly 30-UC-407)

ADDENDUM TO DECISION AND ORDER

On September 23, 2004, I issued a Decision and Order in this matter. Prior to issuing the Decision, I had not received a copy of the Employer's post-hearing brief. On September 27, I received the Employer's post-hearing brief and advised the Employer that it was untimely, as it had been sent to the wrong address, and it would not be considered.

By letter, Employer counsel acknowledged receipt of my September 27 letter, and advised me that the brief was sent to the wrong address because the hearing officer in the case (who is in Region 30) provided the parties an incorrect address. With his letter, Employer counsel provided a copy of a letter dated September 14, 2004, from the hearing officer. In the September 14, letter the hearing officer advised the Employer and Petitioner that this case was transferred for decision to Region 18, and to submit their briefs directly to me. The hearing officer also gave the parties an address for the offices of Region 18 that is identical to the address used by the Employer in filing its brief.

In view of the foregoing, I grant the Employer's request to reopen the record insofar as it requests that I consider the arguments made in its post-hearing brief. After reviewing the brief, I affirm the findings and conclusion contained in my September 23 Decision and Order.

In its post-hearing brief, the Employer makes essentially two arguments.

The first argument made by the Employer is that the petition in this case improperly seeks to enforce an "after acquired facilities" recognition clause, and to mandate application of the parties' contract to "newly acquired and independently operated facilities." The Employer further maintains that the current recognition clause does not apply to any facilities acquired by the Employer after 1999.

There is no question of the validity of the Employer's argument that the Board precludes a union from utilizing a recognition clause to gain recognition at facilities acquired by the Employer after recognition. In fact, it is because of that Board policy that I rejected Petitioner's request to clarify employees of the Songalia practice into the existing unit in the September 23 Decision. I noted that the Songalia practice is in a different building, 18-20 miles from the buildings where unit employees are employed.

The problem is, the Employer's argument that the Prevost and Lehmann practices are newly acquired facilities is contrary to the unit description, and is unsupported by the record. First, the Employer's argument is contrary to the unit description. In this regard, I am mindful of the Board's admonition that evidence of subjective intent regarding the meaning of a stipulated unit is permissible only if objective intent cannot be determined from the language of the stipulation. McFarling Foods, Inc., 336 NLRB 1140 (2001). Here the language of the certified unit could not be clearer – the certified unit includes licensed practical nurses, clerical employees and receptionists employed by the Employer at its Ishpeming and Negaunee clinics. Of course,

the parties subsequently modified the certified unit description in their contract. However, the unit description in the contract is even broader than the certified unit description. More importantly, neither the certified unit nor the contractual unit is limited to the five practices that the Employer now contends are the appropriate unit. Thus, as I stated in my September 23 Decision and Order, "the additions of Dr. Lehmann and Dr. Prevost to the Employer's staff, are akin to a change in managerial/supervisory employees. Therefore the additions of the Lehmann and Prevost practices fall within the present unit description and are merely additions to the existing contractual unit, not unlike an employer's decision to add a department to a production unit in a manufacturing plant" (page 9). Important to my conclusion is the fact that the Prevost and Lehmann practices are in the same buildings as the practices included in the unit. Thus, in my view, the Employer has created an artificial definition of "facilities" in an effort to argue that Petitioner is violating the Board's policy regarding "after acquired facilities."

In addition, even if I were to examine evidence of the parties' intent, I reject the Employer's assertion that the parties intended the unit to be limited to the five practices that existed at the time of certification. The only evidence offered by the Employer is testimony by Employer COO Tuma that the parties meant to apply the contract's unit description only to employees of practices owned by the Employer as of August 27, 1999. The language of the contract, of course, does not support this assertion. More importantly, this record establishes that the practice of the parties prior to the purchase of the Lehmann practice was to include in the unit employees of all practices. As the Employer's post-hearing brief acknowledges, employees of the Madjar and Fitzgerald practices (neither of which existed in 1999 nor do they exist today) were in the unit. Finally, the Employer is in essence arguing for a unit that could disappear over

time – if and when the original five practices disband even though they may be replaced by new practices.

The Employer's second argument is that the Board follows a restrictive policy in finding accretions to existing units, and the evidence overwhelmingly suggests accretion is not appropriate. Again, I do not disagree with the Employer's interpretation of Board law regarding accretion. I also do not disagree with the Employer's characterization of the evidence. However, as I make clear in the September 23 Decision and Order, the employees in the Lehmann and Prevost practices are merely additions to the existing unit, and therefore I have not applied accretion principles.

In view of the foregoing, I affirm my Order dated September 23, 2004.[1[1]]

Signed at Minneapolis, Minnesota, this 1st day of October, 2004.

/s/Ronald M. Sharp

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[1[1]] Because I have reopened the record to consider the Employer's post-hearing brief, I will provide a date for filing a request for review that is consistent with issuance of the Decision in this case on the date of this document. Therefore, under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **October 15, 2004**.